

OPEN MEETING LAW REGULATION

PUBLIC HEARING

One Ashburton Place
21st Floor
Boston, Massachusetts 02108

Thursday, August 5, 2010

PANEL:

From the Office of the Attorney General

Britte McBride
Jennifer Grace Miller
Jonathan Sclarsic

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P R O C E E D I N G S

BRITTE MCBRIDE: I think we're going to get started. Everyone, please take your seats.

Good afternoon. My name is Britte McBride and I am the Director of the Division of Open Government in the Attorney General's office. With me from the Attorney General's office are Jennifer Miller, the Chief of the Government Bureau and Jonathan Sclarsic, Assistant Attorney General in the Division of Open Government.

Today is Thursday, August 5, 2010. This is a public hearing to receive testimony on the Open Meeting Law Regulations included at 940 CMR 29.00 as promulgated by the Attorney General. These regulations were promulgated as emergency regulations on July 1, 2010. This hearing is being held pursuant to Chapter 30A Sections 2 and 3 of the General Laws and under the authority granted to the Attorney General by 30A, Sections 25(a) and (b) of the General Laws. The notice for this hearing was published in the

1 State Register by the Secretary of State on
2 July 23, 2010. The purpose of these
3 regulations is to interpret, enforce and
4 effectuate the purposes of the Open Meeting
5 Law, Chapter 30A, Sections 18 through 25 of
6 the General Laws.

7 We are holding four public hearings. A
8 hearing today in Boston. A hearing on
9 Monday, August 9th in Worcester. A hearing
10 on Tuesday, August 10th in Springfield, and a
11 hearing on Wednesday, August 11th in New
12 Bedford.

13 The purpose of this hearing is to
14 receive comments on the emergency regulations
15 promulgated on July 1st. We ask that you
16 limit the scope of your comments during this
17 hearing to the regulations before us. We are
18 eager to hear oral testimony from anyone who
19 wishes to speak. We ask that those who wish
20 to testify, sign up on the sheet in the back
21 of the -- actually, outside the doors. We
22 will call individuals to testify in the order
23 in which they've signed up with the exception
24 of any sitting Constitutional officers, State

1 Senators and State Representatives will be
2 taken out of order.

3 In order to ensure that everyone who
4 wishes to speak will be able to do so without
5 undue delay, we ask that you limit your oral
6 testimony to five minutes. Although I think
7 that should be plenty of time for everybody
8 here. And if there is a desire to speak
9 further, I think that shouldn't be too much
10 of a problem.

11 We have a stenographer transcribing the
12 testimony so we ask that you make your best
13 effort to speak clearly. Before you begin
14 your testimony if you could please state and
15 spell your name, that would be extremely
16 helpful.

17 Finally, public comment on the Open
18 Meeting Law Regulations will remain open
19 until August 18th. We will accept written
20 comments today during the hearing. Please
21 submit your comments to Jim Ermilio who is
22 sitting right over there to the left. You
23 may also submit written comments through the
24 close of business on August 18th either

1 through e-mail to openmeeting@state.ma.us or
2 through postal mail to the Office of the
3 Attorney General, Division of Open
4 Government, One Ashburton Place, Boston,
5 Mass. 02108.

6 Additional information pertaining to
7 the Open Meeting Law, these regulations and
8 the hearings may be found on the Attorney
9 General's website.

10 And without further ado, Mr. Ross
11 Malone.

12 ROSARIO MALONE: Good evening,
13 ladies and gentlemen. I'm here basically in
14 my capacity as President of the Mass. City
15 Corps Association.

16 BRITTE MCBRIDE: Do you mind I'm
17 sorry, just stating and spelling your name
18 for the stenographer?

19 ROSARIO MALONE: My name Rosario C.
20 Malone. I call myself Ross. My parents had
21 a great sense of humor when they named me.

22 I come from the 28th best city to live
23 in as far as Money Magazine goes. We're very
24 proud of that. And we are a city of

1 transparency. We've come a long way from the
2 sixties and the seventies. We PDF file all
3 of our vital records so that people can get
4 at them in seconds. It's a great way to do
5 business with computers. And although when I
6 come into that office nine years ago, it was
7 much different. It wasn't the fault of the
8 administration running the office. It was
9 just basically what we had at the end after
10 that. But we, we are definitely very
11 transparent in our every day business.
12 Nobody basically transposes any deliberation
13 the same way. You can have six different
14 people taking minutes, and you get six
15 different types of minutes. We in no way are
16 offended or can't operate under the Open
17 Meeting Law, the new Open Meeting Law. It's
18 an unended mandate as far as, you know, the
19 bulletin board and doing stuff like that.
20 And maybe even having, maybe even having a
21 third person at our Council meetings, because
22 sometimes those papers and issues are flying
23 around and you're up there trying to run the
24 meeting, and it takes away from concentration

1 on recording minutes. But we've been doing
2 it for a couple weeks now and we have a hold
3 on it and we have a hold on it. We have a
4 grasp on it.

5 On one issue where a late filing came
6 in, you basically have to have a meeting
7 notice, then an agenda to follow it.
8 Sometimes we have late filings come in after
9 our deadline at one o'clock on Wednesdays
10 because they don't count Saturdays and
11 Sundays now. So with that late filing, it's
12 only a suspension of our rule that says you
13 can't file after one o'clock. It's not an
14 issue of you can't do it. So when we look at
15 the Open Meeting Law, we look at a way that
16 we can get the job done by suspending rules
17 and by doing things like that. It's not to
18 hide anything from anybody. It's not to do
19 anything that we haven't done before. And
20 again, I'd say as far as transparency goes,
21 our city does a great job.

22 I would like to read into the record
23 something that the City of Melrose gave me
24 and that will basically be the end of my

1 testimony.

2 It's from Robert Van Campen, a City
3 Solicitor of Melrose and it reads: Office of
4 the Attorney General Division of Open
5 Government, One Ashuburton Place, 20th floor,
6 Boston, Massachusetts. It's regarding public
7 comment regarding Attorney General's
8 emergency regulations implementing revised
9 Open Meeting Law. Dear Sir and Madam:
10 Please accept the foregoing comments on the
11 behalf of the City of Melrose in connection
12 with the emergency regulations recently
13 promulgated by the Attorney General to
14 implement the revised Open Meeting Law. I
15 have received notice that the Attorney
16 General has scheduled a series of public
17 hearings to discuss these recently
18 implemented regulations and request that the
19 following comments be incorporated into the
20 official record of this hearing. As
21 previously expressed by Robert Nasdor,
22 Director of Division of Open Government, the
23 City of Melrose embraces the importance of
24 public participation and transparency in

1 local government. Although the spirit and
2 the intent of the revised Open Meeting Law
3 are admirable and worthy of support from
4 cities and towns across the Commonwealth, the
5 requirement of the revised Open Meeting Law
6 appears to go far beyond its intended
7 benefit. In fact, many of the new
8 requirements contained within the revised
9 Open Meeting Law will result in unintended
10 consequences for municipalities, boards and
11 commissions and those staff members serving
12 each of these entities. In connection with
13 the public comment process, the City of
14 Melrose respectfully requests that the
15 following new requirements be considered and
16 modified whether through regulatory or
17 legislative action.

18 Do you want me to read them?

19 BRITTE MCBRIDE: Please.

20 ROSARIO MALONE: Okay.

21 Notice of posting requirements as set
22 forth in the revised Open Meeting Law, all
23 meeting notices of public meetings are now
24 required to be posted in an area which is

1 visible to the public at all hours, in all
2 municipal buildings which city clerk's
3 offices are located. The impacts to comply
4 with the new requirement could be far
5 reaching. Whether having to deal with the
6 cost of associated or purchasing additional
7 paper of a cost or purchasing an electronic
8 bulletin board to comply with the new
9 requirements, the added expense to cities and
10 towns is likely to be quite high. Moreover,
11 there would be an increased burden on already
12 strained human resources and requiring staff
13 and/or volunteers to now post each of these
14 meeting notices in additional locations.
15 Although meeting notices are already posted
16 on it, the revised open meeting law
17 specifically prohibits the use of the city
18 website to comply with the new posting
19 requirements. One could argue that such
20 prohibition runs counter to the policy of the
21 Commonwealth in trying to become more and
22 more green and conserve the state's natural
23 resources. It is clear that allowing use of
24 city websites to comply with the new posting

1 requirements would serve in the
2 environmentally conscious rules the
3 Commonwealth has strived for over the past
4 several years. In addition, allowing the use
5 of the city electronic communication system
6 affords great access to public notices and
7 reduces costs to cities and towns.

8 Remote participation, the revised Open
9 Meeting Law provides that the Attorney
10 General may by regulation or letter ruling
11 allow remote participation by members of the
12 public body. However, the Open Meeting Law
13 guide issued by the Attorney General issued
14 July 1, 2010 states that the remote
15 participation by members of the public bodies
16 is not permitted under the revised Open
17 Meeting Law. Either the statute or the
18 implementing of regulation requires
19 clarification in order to avoid confusion
20 going forward as to the ability of members to
21 participate remotely.

22 Agendas. Additional revised Open
23 Meeting Law now requires that all meeting
24 notices, which ought to be posted 48 hours

1 before the meeting, must include the names of
2 the public body, the date, the time, location
3 of the meeting and an agenda. Unfortunately
4 posting specific agenda items at least 48
5 hours before the meeting poses one of the
6 biggest challenges to the municipal boards
7 and commissions. In fact, this very
8 requirement seems to defeat legislature's
9 purpose in making local government more open
10 and transparent. Specifically mandating that
11 the meeting posting is not official until the
12 agenda has been posted, forces many boards
13 and commissions to post agendas that are less
14 accurate than if they had posted within a
15 shorter period of time. As a result, I would
16 respectfully suggest that the Attorney
17 General's office give more concentration to
18 ensuring openness and transparency with
19 respect to meeting agendas without
20 sacrificing the ability of the local boards
21 and commissions to effectively accomplish
22 their regulatory and statutory purpose.

23 Meeting records and retention. An
24 additional point of concern is that the

1 revised Open Meeting Law requires that
2 documents and exhibits presented at the
3 meeting ought to be incorporated as a part of
4 the official record and made available for
5 public viewing within ten days of the
6 meeting. Notwithstanding that most records
7 are submitted electronically and others are
8 submitted in a larger poster size display.
9 This record retention requirement is
10 virtually impossible to comply with when one
11 considers the already overcrowded storage
12 spaces in many cities and towns. Any final
13 regulation should be given serious
14 consideration to the collision between these
15 two public records requirements and the
16 spirit and intent of the revised Open Meeting
17 Law.

18 In summary, the City of Melrose
19 supports the intended purpose of revised Open
20 Meeting Law in bringing greater openness and
21 transparency to local government. However,
22 many of the provisions of the revised Open
23 Meeting Law although intended to be provide
24 for an open and transparent government have

1 created additional burden and cost for the
2 cities and towns and are truly unnecessary.
3 Given these costs and burdens I strongly urge
4 the Attorney General to either revise the
5 current regulations or seek legislative
6 action and ease the impact these new
7 requirements will have on already
8 restrained municipal budgets.

9 Thank you for your attention. This is
10 signed Robert J. Van Campen of City
11 Solicitor, City of Melrose.

12 As President of the Mass. City Corp
13 Association we certainly, certainly support
14 transparency and we've done a good job of
15 doing it over the last ten years. And of
16 course we are respectful to your feelings,
17 what you want to do and that of the voters of
18 the Commonwealth and that of the citizens of
19 the Commonwealth. And our transparency is
20 No. 1. Thank you very much.

21 BRITTE MCBRIDE: Thank you.

22 Next to testify is Tedi Eaton.

23 THEODORA EATON: Good afternoon. I
24 guess we have to be official. My name is

1 Theodora K. Eaton. I'm the Town Clerk of
2 Needham, Massachusetts, and I'm the current
3 President of the Massachusetts Town Clerk's
4 Association.

5 I first would like to say that Needham
6 is a pretty well run town. We do not have a
7 lot of problems with the Open Meeting Law.
8 We've been giving out a form of Open Meeting
9 Law regulations for many, many years. And
10 most of our boards and committees comply with
11 it. If they don't comply with the 48 hour
12 notice, I usually send them a little note
13 saying you better not do this again and you
14 may be in trouble. And they pretty much
15 listen. But we also favor transparency in
16 government. My comments, some are going to
17 be very similar. They are from the various
18 city and town clerks in Massachusetts that we
19 have compiled. And if you'd like me to read
20 them into the record I will. If you would
21 like a copy of them sent e-mail, I can do
22 that also.

23 The Open Meeting Law is a positive
24 approach to assure public access to the

1 activity of government at all levels. And to
2 eliminate much of the secrecy surrounding the
3 deliberations and decisions upon which public
4 policy is based, the Open Meeting Law
5 supports the principles that the Democratic
6 process depends on the public having
7 knowledge about the consideration underlying
8 government action. Municipal clerks support
9 the intent of the law and consider it
10 admirable and worthy of support. The demands
11 of the law, however, may go beyond its
12 benefits. Many requirements for the board
13 and committee operations logistical
14 requirements for meeting the postings 24/7
15 and demands on staff time and municipal
16 storage appear to be counterproductive to the
17 intended benefits, and represent a step
18 backward to pay for record keeping that is
19 inconsistent with today's emphasis and
20 electronic communications and conservation of
21 resources. While the municipal clerks are
22 more than willing to comply with the Open
23 Meeting Law legislation, many of the demands
24 have created unintended consequences for

1 municipal governments, boards and committees,
2 and the offices of the municipal clerk. Be
3 it a small community of several thousand,
4 this clerk was open for business several
5 hours a week to one of the larger communities
6 who has a full-time clerk and multiple staff.
7 The Massachusetts clerk seeks to assist the
8 Attorney General's office in resolving some
9 of the difficulties created by this
10 legislation and urge review and modification
11 of the legislation to achieve within reason
12 the desired result. We ask your review of
13 the following new requirements:

14 Posting for 24/7 public access. All
15 meetings must now be posted 48 hours to the
16 meeting, not including Saturday, Sunday and
17 holidays. This means that the clerk must
18 post a Monday meeting on the previous
19 Thursday in order to be in compliance. The
20 MTCA urges you to revise the regulations on
21 posting and conclude that the 24/7
22 availability of internet postings is a
23 reasonable and effective solution to the;
24 legislative mandate for expanding public

1 access from paper postings and clerk's office
2 only. Web-based calendars distribute the
3 information to the public without having to
4 go look at a bulletin board in a single
5 location. It appears that the physical
6 posting or providing a terminal in another
7 24/7 site, adds little to the transparency
8 goals and imposes significant costs on
9 municipalities. In addition, accurate
10 updating of the materials on such physical
11 bulletin boards can result in confusion if
12 materials are out of date or superseded by
13 revised postings. A web-based system allows
14 for timely and accurate updating of materials
15 either from the municipal office or in some
16 cases remotely. Paper-based postings in
17 multiple locations requires duplicate work by
18 committees and clerks. When a board or
19 committee can e-mail a posting that can be
20 linked to the web calendar, the whole process
21 can take place in a matter of seconds. When
22 posting process is seamless less staff time
23 is devoted to paper postings and the
24 productivity of staff is enhanced. In

1 communities with many boards, committees and
2 citizen advisory boards, the burden of paper
3 postings can be costly. Use of modern means
4 of communication with the public increases
5 the municipalities effectiveness.

6 Second item, agendas. Additionally all
7 meeting notices must contain the name of the
8 committee, the date, time and location of the
9 meeting, and an agenda or list of items that
10 the Chair reasonably anticipates will be
11 discussed. If per chance the agenda is
12 revised, it is strongly suggested that the
13 new agenda be sent to the municipal clerk to
14 post within the 48-hour period before the
15 meeting. Posting agenda items at least 48
16 hours in advance of the meetings seems to be
17 one of the biggest challenges for municipal
18 boards and committees. And in many respects
19 the requirement seems to be defeating the
20 purpose of openness and transparency in
21 government. The requirement that a meeting
22 posting is not official until the agenda is
23 posted, is causing boards and committees to
24 post agendas that are less specific or

1 accurate than if the agendas were to be
2 posted within a shorter period of time.
3 Agenda posting requirements should be viewed
4 more closely and consideration given to
5 meeting desired openness without sacrificing
6 ability to effectively conduct a meeting.

7 Third item, remote participation. And
8 I think this is pretty much a repeat. The
9 Open Meeting Law says the Attorney General
10 made by regulation or letter of ruling
11 authorize remote participation by members of
12 a public body under Section 22. While the
13 Open Meeting Law guide on page nine says
14 remote participation by members of public
15 bodies is not permitted under the Open
16 Meeting Law. The statute and current
17 regulations or guidelines for remote
18 participation needs clarification.

19 Item 4, meeting records and retention.
20 In addition to the minutes of every
21 committee, the documents and exhibits
22 presented at the meeting are now to become
23 part of the official record and made
24 available to the public within ten days.

1 Many reports, charts, maps are submitted in
2 electronic format. Others are submitted in
3 large poster type displays. Requiring all
4 boards to retain such documentation as part
5 of the meeting minutes will create a major
6 records retention space issue and exacerbate
7 already overcrowded storage space for many
8 municipalities. Public record requirements
9 and Open Meeting Law requirements must be
10 brought together to clearly identify
11 retention requirements. I can say this
12 because we just moved out of the Needham Town
13 Hall last February and I never packed up so
14 many items dating back to 1711. And the only
15 thing I have to look forward to is to repack
16 it and unpack it in 18 months.

17 Many of the new Open Meeting Law
18 provisions and requirements, although
19 intended to provide for an open and
20 transparent government, have created burdens
21 on municipalities. The MTCA encourages you
22 to review current regulations and file
23 amendments to reflect modern practices at a
24 reduced cost or burden to municipalities.

1 The MTCA looks forward to supporting the
2 changes that will achieve this goal.

3 Last item, complaint process.

4 Clarification is needed under the complaint
5 process. The Open Meeting Law regulations
6 under 29.05: Complaints, subsection 3,
7 states that for local public bodies the
8 Complainant shall file the complaint with the
9 municipal clerk. For all other public
10 bodies, the Complainant shall file the
11 complaint with the chair with the relevant
12 public body. Under publication Open Meeting
13 Law General Laws Chapter 30A Sections 18 to
14 25 effective July 1, 2010, Section 23 it
15 states that the Complainant shall file a
16 written complaint with the public body.
17 Filing a complaint through the municipal
18 clerk in the first instance imposes an
19 intermediary step and puts the burden of
20 forwarding such complaints on the clerk
21 rather than the Complainant. Many
22 municipalities have multiple boards and
23 committees. The municipal clerk is not
24 equipped to be the filing agent for

1 complaints. This duty could imply the need
2 to calendar and track resolution of the
3 matter or to determine if the complaint has
4 been sufficiently filed. The statutory
5 language clearly states that the filing is to
6 be with the public body itself.

7 In conclusion, it is important to
8 balance the transparency of local government
9 with a practicality of implementation. We
10 thank you for listening to the concerns of
11 the Massachusetts Town Clerk's Association.

12 BRITTE MCBRIDE: Thank you.

13 THEODORA EATON: And I do have
14 copies if anyone would like them.

15 BRITTE MCBRIDE: Joe Powers.

16 JOE POWERS: I would actually like
17 to defer to the previous speakers.

18 BRITTE MCBRIDE: Thank you.

19 Michael Yunits.

20 MICHAEL YUNITS: Good afternoon.

21 Michael Yunits.

22 BRITTE MCBRIDE: If I can just
23 interrupt you for one second. We only have a
24 few more people who want to testify, I think

1 I'm going to waive the five minute speaking
2 so I think we can go ahead and please start
3 testi fyi ng.

4 MICHAEL YUNITZ: I just wanted to
5 say more or less of what many people have
6 said already, that the Town of Holbrook
7 considers this an unfunded mandate placed on
8 the towns. And I will say it was nice that
9 we received a handout when we came in today
10 because most state agencies are now e-mailing
11 the information to us and telling us to print
12 it out when we come so they don't have to go
13 -- another burden onto the town so they don't
14 have to go to the expense of printing out
15 material.

16 Many towns such as Holbrook have seen
17 significant reductions in the workforce over
18 the last three years. The burden of the new
19 requirements for posting 24/7 will put a
20 burden on our town clerk, who many times is
21 by herself in the office, and she has many
22 tasks that she has to see to during the day.
23 And now we're going to require that she
24 receive open meeting notices from departments

1 and then post them on a computer visible to
2 the public 24/7 at the entrance to the Town
3 Hall. We've gone to great expense to
4 establish a website in town and to maintain
5 that website every year. We've gone through
6 the expense of training our staff with
7 procedures to posting on the website. And
8 the process would be much more streamlined if
9 each department can post their notices on the
10 website when they're going to have a meeting
11 and take that burden off the town clerk.

12 Also, as was mentioned earlier, what
13 will be happening now with the requirement of
14 posting agendas, you won't see a true agenda
15 posted for many meetings. You'll see people
16 posting agendas listing a myriad of topics
17 that may not even be addressed because they
18 want to make sure they have everything
19 covered just in case. With the requirement
20 that posting be done 24/7, it doesn't make
21 sense that Saturdays are not included now.
22 If the information has to be available 24/7,
23 I don't see why Saturdays couldn't be
24 included in the posting. And as was said

1 earlier, many times a Selectmen's meeting may
2 be taking place on a Tuesday night. A
3 contractor may come in on a Monday to the
4 Public Works Department and have a request
5 for a street opening permit that has to be
6 addressed by the board, if we don't have that
7 listed as an agenda item, we would not be
8 able to take that up. And the board meets
9 every other week so the contractor will be
10 held up. It's just a burden that's put on
11 them.

12 So we encourage you, as many other
13 people have said, to look at the requirements
14 as far as the posting to allow posting on the
15 town websites and also the records retention
16 requirement. We don't have the space to
17 store this information and it's quite a
18 burden on the towns to be required to do
19 that.

20 Thank you.

21 BRITTE MCBRIDE: Allison Ananis.

22 ALLISON ANANIS: So my name is
23 Allison Ananis, A-n-a-n-i-s and I'm the
24 Acting Executive Director of the Commonweal th

1 Covenant Fund. Our program offers tuition
2 loan repayments to students who attend public
3 universities or colleges in Mass. and stay to
4 pursue careers in the stem fields, science
5 technology, engineering and math. And our
6 mission is to promote talented stem graduates
7 because they're the economic drivers of
8 future growth.

9 We strategically created a
10 geographically diverse board to ensure all
11 regions of the Commonwealth are represented.
12 The consequence of that is that -- of having
13 a geographically diverse board, as well as
14 appointed Senators and State Representatives
15 is that not everyone can physically attend
16 our meetings, our board meetings. We changed
17 our by-laws allowing members to call in to
18 report to our meetings. This change allows
19 more members of the board to participate
20 regularly and to ensure that we have a quorum
21 vote on issues before the board.

22 Complying with the new Open Meeting Law
23 regulations would mean we would reconstitute
24 our board to a Boston central board. We do

1 not believe this is the intent of the Open
2 Meeting Law legislation. We believe that if
3 we post our meetings as required and have
4 them in a publicly accessible conference
5 room, we would meet the intent of this
6 legislation. We do not feel that allowing
7 board members to call in violates this
8 intent.

9 We would respectfully request the
10 implementation of this law, allow
11 accommodations for a geographically diverse
12 board to ensure public access for all
13 constituencies of the Commonwealth.

14 So short and sweet, but that's it for
15 us. Thanks.

16 BRITTE MCBRIDE: Thank you.

17 Nancy Oates (phonetic).

18 NANCY OATES: I'm going to defer.

19 BRITTE MCBRIDE: Does anybody else
20 wish to testify?

21 KEVIN MCCREA: I missed the sign-up
22 list. Is it okay?

23 BRITTE MCBRIDE: Sure.

24 KEVIN MCCREA: We have two people I

1 think here.

2 BRITTE MCBRIDE: Would you mind just
3 stating and spelling your name.

4 KEVIN MCCREA: Sure. Kevin McCrea,
5 Boston, Massachusetts.

6 Can you tell me where this meeting was
7 posted at a 24-hour public place? Isn't that
8 a requirement of the Open Meeting Law? Is
9 this a meeting?

10 BRITTE MCBRIDE: This is a public
11 hearing.

12 KEVIN MCCREA: Uh-huh. And where
13 was it posted?

14 BRITTE MCBRIDE: As I stated in the
15 opening statement --

16 KEVIN MCCREA: I'm sorry, I was
17 late. I apologize.

18 BRITTE MCBRIDE: As I stated in the
19 opening statement, this was posted in the
20 Massachusetts Register published by the
21 Secretary of State's office on July 23, 2010.

22 JONATHAN SCLARSIC: It's also
23 published in the Boston Globe.

24 KEVIN MCCREA: Is it posted in a

1 24-hour public access place anywhere?

2 JENNIFER MILLER: Well, it's
3 certainly on our website. And this body is
4 not a -- this is a public hearing which is
5 controlled by different -- a different
6 statute.

7 KEVIN MCCREA: Which statute is
8 that?

9 BRITTE MCBRIDE: It's 30A, Sections
10 2 and 3 General Laws.

11 KEVIN MCCREA: Okay. Well, you guys
12 heard of me? Do you know who I am? Ever
13 heard of me before, Kevin McRae?

14 JENNIFER MILLER: We're glad to make
15 your acquaintance.

16 KEVIN MCCREA: Of course not.

17 I am currently in the longest running
18 open meeting suit McCrea versus Michael
19 Flaherty and the Boston City Council. We won
20 the largest fine in state history against a
21 City Council. The case is still going on.
22 There is a case law, Attorney General Shannon
23 versus Boston City Council, we contacted
24 Attorney General Coakley asking her to

1 enforce these violations of the law. She
2 refused to help. She refused to prosecute.
3 She refused to enforce the law causing myself
4 and two other citizens with not one day of
5 law school amongst the three of us to
6 prosecute the case. The City of Boston has
7 now spent between 200 and 300 thousand
8 dollars of taxpayer money fighting the three
9 of us, going through the appeals court case.
10 McCrea versus Flaherty is now case law. If
11 you guys new anything about the Open Meeting
12 Law, you may have heard about it. I suggest
13 you read up on it.

14 I would like to know if the Attorney
15 General is actually going to enforce the law
16 at all. If she has any intention whatsoever
17 of enforcing the law?

18 BRITTE MCBRIDE: As I stated in the
19 opening statement --

20 KEVIN MCCREA: Which I apologize I
21 was late for. Some of us work for a living.

22 BRITTE MCBRIDE: As I stated, we
23 have asked folks who are going to be
24 testifying to limit the comments, the scope

1 of the comments to the regulations that are
2 before us, the public hearing today, which
3 you have a copy of. We are certainly happy
4 to receive any comments you might have on the
5 regulations today during this hearing. We
6 are also certainly happy, as we are with
7 anybody else, to receive public comments
8 until August 18th with regard to the
9 emergency regulations. That is what the
10 purpose of this public hearing is, is to
11 receive comment on these emergency
12 regulations that are before us today.

13 KEVIN MCCREA: Okay. I would
14 suggest to the Attorney General if she has
15 any intention of enforcing this law and
16 giving the public any indication that she has
17 any intention of enforcing this law, that she
18 put out publicly changes to the Open Meeting
19 Law as adopted by the Legislature this past
20 year. And in particular the word
21 intentional. As watered down as this Open
22 Meeting Law is here in Massachusetts with no
23 enforcement mechanism, no fine mechanism, if
24 she truly cared about making this a

1 transparent state, I would suggest that she
2 put forth publically on the website how she
3 would like to see this rewritten so that it
4 actually has some enforcement mechanisms with
5 some real penalties for people that violate
6 the law. Because currently there are none.
7 And taking it from five years of experience
8 in court, the courts aren't going to enforce
9 anything. And any fines that have to be
10 paid, have to be paid by we the taxpayers
11 anyway on top of all the legal bills that we
12 pay. And adding that one word in here about
13 intent makes it even harder to prosecute. So
14 I would suggest that if she doesn't have --
15 if she has any intention of ever prosecuting
16 any of these cases, she will publically come
17 out, say that these -- that this law is
18 watered down, cannot be enforced, won't be
19 enforced, and doesn't have any sort of
20 penalties that are going to make any
21 legislators feel like they have to follow the
22 Open Meeting Law then we'll know that she's
23 not serious about enforcing the Open Meeting
24 Law. So, I would like to see her push

1 publically to get the legislature to rewrite
2 this, to take the word intent out of it. And
3 I'll leave it at that.

4 My question would be are you going to
5 continue to prosecute cases that the District
6 Attorney turned over to you, do you know
7 anything about that at all?

8 BRITTE MCBRIDE: I think that we
9 would be happy to --

10 KEVIN MCCREA: All public officials
11 are always happy to take things under
12 advisement and then they don't do anything
13 with them.

14 BRITTE MCBRIDE: As of July 1st, the
15 Attorney General's office has oversight and
16 enforcement authority over Open Meeting Law
17 and over complaints that have been filed. I
18 think that --

19 KEVIN MCCREA: Who's the contact
20 information person I should find out about to
21 follow up on what they're doing?

22 BRITTE MCBRIDE: You can contact me.

23 KEVIN MCCREA: Are you Britte?

24 BRITTE MCBRIDE: Yes I am.

1 KEVIN MCCREA: Can I get a phone
2 number for you?

3 BRITTE MCBRIDE: 617-727-2200.

4 KEVIN MCCREA: Are you an attorney?

5 BRITTE MCBRIDE: I am.

6 KEVIN MCCREA: Are you going to be
7 following up on any of these cases? Are you
8 currently now?

9 BRITTE MCBRIDE: Any complaints that
10 come to our office will go through --

11 KEVIN MCCREA: No. Do you have any
12 complaints that have been turned over by any
13 District Attorneys that you're prosecuting
14 right now?

15 BRITTE MCBRIDE: We have several
16 cases that we are looking at and reviewing
17 generally. And I can't comment any further
18 at this point in time.

19 KEVIN MCCREA: Sure. Of course.
20 Thank you very much.

21 BRITTE MCBRIDE: Would anyone else
22 like to testify?

23 MARTY ROSENTHAL: My name is Marty
24 Rosenthal and I sent you a somewhat rambling

1 e-mail last night. I don't know if you had a
2 chance to look at it too carefully. But just
3 by way of background, I'm a former selectman
4 in Brookline, I was a chairman of the board
5 for a year in the eighties. I know I don't
6 look that old. I also co-chair a -- we call
7 ourselves a liberal advocacy group, Brookline
8 PACS which was founded in 1962 and has a
9 website which you can find out more about us
10 if you wish.

11 What I want to talk about a little bit
12 is what we did in Brookline in 2007 that my
13 initiative largely, a by-law that I largely
14 wrote and was passed and the Attorney
15 General's office approved. And the idea of
16 it was to pursue, I think, what seemed to be
17 two of the primary goals of the regulations
18 in the AG's office and hopefully the statute
19 as well, transparency in citizen
20 participation. And what we did, which I
21 think I sent you the pertinent language from
22 Brookline. But one thing that seems to be
23 missing -- I just glanced at the regulations,
24 proposed regulations when this -- they came

1 out, whatever it is a month, two months ago.
2 The one thing that we did, and I don't know
3 if you'd consider it, is we required that
4 meeting notices go to a voluntary list serve
5 of citizens in Brookline that want to be
6 notified of every public meeting. And I
7 worked before in the drafting of the by-law
8 and I'm also on a committee of old retired
9 selectmen called the Committee and Town
10 Committee Structure. And I worked with the
11 town administrator's office and the
12 information services people. We gave them a
13 grace period from November until July. I
14 assume it was approved in the interim. But
15 anyway, it was passed in November of '07 and
16 gave them until July of '08 to implement it.
17 And the meeting notices now are going out
18 routinely. I don't know how large the list
19 is. I know it's several hundred people in
20 Brookline that get them, and I get them every
21 day. There were two this morning with an
22 agenda and a contact person. So, I think
23 that's better than anything I see in the
24 regulations. And I do think, and I haven't

1 studied this carefully, that it's within the
2 scope of what you gently required -- you
3 haven't required things. I think you've
4 said -- you've said -- I mean the proposed
5 regulations talk about possible alternatives.
6 And it seems to me that could be added as a
7 possible alternative.

8 Now, the second thing I want to
9 highlight, and frankly, I think we could have
10 done better with this. When we wrote that
11 by-law, the word minutes as you may know, was
12 not in the original Open Meeting Law. And
13 it's been added -- the new law has the word
14 minutes. And I think that's an improvement.
15 I was surprised when I was working on the
16 Brookline by-law not to see the word minutes
17 in the old law. And what we wrote was -- and
18 so because of that, I was trying not to
19 overstep the requirements of the existing
20 Open Meeting Law too much. And so the
21 language that we put in was an agenda that's
22 reasonably descriptive of the intended
23 business. And then the records section said
24 only records of all meetings of town

1 government bodies shall be reasonably
2 descriptive of the business conducted and
3 shall include a summary of discussions. Now,
4 that was an attempt to be similar to minutes,
5 but a little more specific than what the old
6 law required.

7 Now, I think the new law is a little
8 better than that, because minutes suggests --
9 I haven't seen if there's a definition, but
10 it suggests something a little more of a term
11 of art, and that's fine with me. But the one
12 thing that I do think is a bit of a gap in
13 both the new law, the regulations and what we
14 did in Brookline, is if you want -- if a
15 citizen wants to attend the public meeting
16 and participate in any way, especially if
17 it's a public hearing of any kind, there is
18 no easy mechanism to get the pertinent
19 background material. And for example, as
20 most of you may know, if there's something
21 coming before a Zoning Board of Appeals,
22 there's always going to be a Planning Board
23 report giving some recommendations and
24 discussing the pros and cons and giving a

1 recommendation for the Zoning Board of
2 Appeals. If you then get a notice for the
3 Zoning Board of Appeals meeting, I've talked
4 to our town clerk about this and the people
5 in Brookline, the planning director about
6 trying to improve this, and they can do it
7 voluntarily and hopefully they will, but
8 there's nothing that enables a citizen to see
9 that Planning Board report easily without
10 calling up someone in Town Hall and asking
11 for it. And I'm sure most cities and towns
12 they would provide it. But I think that
13 should be much more automatic. That when an
14 agenda is posted, that the -- something, some
15 general language that the important
16 background material should also be available
17 on the web. I mean, the basic thrust of what
18 I'm talking about, ought to be relatively
19 obvious, which is that in the 21st century we
20 can do a lot more electronically to allow
21 both transparency and citizen participation.
22 And material needs to be on the local
23 websites, not just agendas. And we had now
24 -- we have a town calendar that includes

1 every meeting, every meeting notice that not
2 only goes out to that list serve, it goes
3 into an electronically available calendar.
4 But it's -- the shortcoming, I think, is the
5 background material which I'm still working
6 on in Brookline, and I'll continue to work on
7 it. But I hope you folks can give a little
8 bit of thought of what can be done to improve
9 that as well. Even, even minutes has been a
10 bit of a -- was still a work in progress on
11 posting minutes electronically in Brookline.
12 The people who work for the town are doing a
13 better job of it because the town
14 administrator has alerted them. But there
15 are a lot of volunteer committees,
16 everywhere, especially in Brookline and some
17 of them don't -- the logistics of getting
18 minutes to the town clerk and the information
19 services department is something slipping
20 through the cracks there. So, anyway that's
21 neither here nor there. But I'll keep
22 working on this in Brookline and I hope you
23 folks will work on it statewide. That's
24 about all I have to say.

1 BRITTE MCBRIDE: Thank you.

2 MARTY ROSENTHAL: Okay. Thanks.

3 BRITTE MCBRIDE: Anybody else care
4 to testify?

5 (No response).

6 BRITTE MCBRIDE: I think that
7 concludes this public hearing. Public
8 comment on the Open Meeting Law regulations
9 is open until August 18th. We encourage
10 individuals to submit comments via e-mail to
11 openmeeting@state.ma.us or by postal mail to
12 the Attorney General's office.

13 Thank you very much for coming.

14 (Hearing concluded at 2:00 p.m.)

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C E R T I F I C A T E

COMMONWEALTH OF MASSACHUSETTS
BRISTOL, SS.

I, Catherine Lawson Zelinski, a
Certified Shorthand Reporter, the undersigned
Notary Public, certify that:

I am not related to any of the parties
in this matter by blood or marriage and that
I am in no way interested in the outcome of
this matter.

I further certify that the testimony
hereinbefore set forth is a true and accurate
transcription of my stenographic notes to the
best of my knowledge, skill and ability.

IN WITNESS WHEREOF, I have hereunto set
my hand this 16th day of August 2010.

Catherine L. Zelinski
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